

Brigham Young University Law School BYU Law Digital Commons

Utah Supreme Court Briefs

2001

Theon Merrill v. Cache Valley Dairy Association : Petition for Rehearing

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_sc2



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

William L. Schultz; Attorney for Plaintiff/Appellant and Cross-Respondent.

B. H. Harris; Joseph M. Chambers; Harris, Preston, Chambers, and Willmore; Attorneys for Defendant/Respondent and Cross-Appellant.

Recommended Citation

Legal Brief, *Merrill v. Cache Valley Dairy Association*, No. 19204.00 (Utah Supreme Court, 2001).
https://digitalcommons.law.byu.edu/byu_sc2/1644

This Legal Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

19204

IN THE SUPREME COURT OF THE STATE OF UTAH

THEON MERRILL,

Plaintiff, Appellant,
and Cross-Respondent,

vs.

CACHE VALLEY DAIRY
ASSOCIATION, a Utah
Cooperative,Defendant, Respondent,
and Cross-Appellant,

Case No. 19204

PETITION FOR REHEARING

APPEAL FROM THE ORDER AND JUDGMENT OF THE FIRST JUDICIAL
DISTRICT COURT SITTING IN AND FOR CACHE COUNTY, STATE OF UTAH

HONORABLE VENOY CHRISTOFFERSEN, DISTRICT JUDGE

B.H. Harris, Esq.
Joseph M. Chambers, Esq.
HARRIS, PRESTON, CHAMBERS, & WILLIMORE
31 Federal Avenue
Logan, Utah 84321
Telephone: (801) 752-3551Attorneys for Defendant/Respondent
and Cross-AppellantWilliam L. Schultz, Esq.
1061 E 2100 South
Salt Lake City, Utah 84106
Telephone: (801) 487-3222Attorney for Plaintiff/Appellant
and Cross-Respondent

FILED

JAN 5 1988

Clerk, Supreme Court, Utah

THEON MERRILL,
Plaintiff, Appellant,
and Cross-Respondent,
vs.
CACHE VALLEY DAIRY
ASSOCIATION, a Utah
Cooperative,
Defendant, Respondent,
and Cross-Appellant,

APPEAL FROM THE ORDER AND JUDGMENT OF THE FIRST JUDICIAL
DISTRICT COURT SITTING IN AND FOR CACHE COUNTY, STATE OF UTAH

B.H. Harris, Esq.
Joseph M. Chambers, Esq.
HARRIS, PRESTON, CHAMBERS, & WILLMORE
31 Federal Avenue
Logan, Utah 84321
Telephone: (801) 752-3551

William L. Schultz, Esq.
1061 E 2100 South
Salt Lake City, Utah 84106
Telephone: (801) 487-3222

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

TABLE OF CONTENTS

	Page
Arguments	
I. THE PLAINTIFF SOUGHT ONLY INJUNCTIVE RELIEF AND THUS THE COURT ERRED IN ASSUMING THAT PLAINTIFF SOUGHT DAMAGES AND IN REMANDING THE CASE ON THAT BASIS.	2
II. THE MAJORITY'S ASSERTION THAT THE MAY 26TH RESOLUTION EFFECTIVELY LEVIES A TWO PERCENT ASSESSMENT ON IDAHO MEMBERS AND A ONE PERCENT ASSESSMENT ON UTAH MEMBERS IS ERRONEOUS AND IF LEFT UNCORRECTED COULD RESULT IN SUBSTANTIAL DAMAGE TO CACHE VALLEY.	3
III. THE MAJORITY OPINION'S REASONING FAILS TO ADEQUATELY DISTINGUISH BETWEEN PLAINTIFF'S STATUS AS A "MEMBER" OF CACHE VALLEY ASSOCIATION AND AS A "MILK PRODUCER" AND THUS MISAPPREHENDS A FUNDAMENTAL AND WELL-ESTABLISHED DISTINCTION IN CO- OPERATIVE LAW.	7
Conclusion.	11
Certificate of Good Faith	12

IN THE SUPREME COURT OF THE STATE OF UTAH

THEON MERRILL,

Plaintiff, Appellant,
and Cross-Respondent,

vs.

CACHE VALLEY DAIRY
ASSOCIATION, a Utah
Cooperative,

Defendant, Respondent,
and Cross-Appellant,

PETITION FOR REHEARING

Case No. 19204

Pursuant to Rule 35 of the Rules of the Utah Supreme Court, Respondent Cache Valley Dairy Association (Cache Valley) hereby petitions the Court for rehearing upon the grounds that the majority opinion appears to have overlooked or misapprehended certain noncontested and indisputable facts and arrived at two erroneous conclusions: (1) the majority opinion erroneously states that Plaintiff sued Defendant for "damages" allegedly sustained as a result of his termination and remands the case for "proceedings consistent with this opinion," apparently including an assessment of damages; and (2) the majority opinion totally misapprehends the nature of the May 26th resolution and asserts that under that resolution Idaho producers could be assessed a two percent levy while Utah producers paid only a one percent assessment.

Moreover, the majority's analysis of Cache Valley's right to terminate the Plaintiff's association with Cache Valley fails to distinguish between the Plaintiff's status as a "member" and a "milk producer" and thus misapprehends a fundamental and well-established distinction in cooperative law. Since no similar cases have been found this case appears to be a case of first impression in the area of state cooperative law. Cache Valley would respectfully urge the Court to grant rehearing so that the opinion receives the benefit of a full adjudication particularly in view of the fact the Court appears to have misapprehended certain facts which are not disputed by the Appellant and Respondent.

POINT ONE

THE PLAINTIFF SOUGHT ONLY INJUNCTIVE RELIEF AND THUS THE COURT ERRED IN ASSUMING THAT PLAINTIFF SOUGHT DAMAGES AND IN REMANDING THE CASE ON THAT BASIS.

The first paragraph of the majority opinion asserts that the Plaintiff sued Cache Valley for "damages allegedly sustained as a result of his termination [as a member of the Cache Valley Dairy Association]." Plaintiff did not seek damages in either his original or amended complaints; rather the Plaintiff sought only injunctive relief and reinstatement of the Plaintiff in the Cache Valley Dairy Association.¹

¹ In the prayer for relief of both the original complaint dated July 30, 1982, (pages 5 and 6), and the amended verified complaint dated November 3, 1982, the Plaintiff has requested only declaratory relief, no ad damnum or other reference to damages exists.

The majority opinion remands the matter to the district court for "proceedings consistent" with the opinion. If the erroneous assumption that the Plaintiff sought damages is accepted, such "proceedings" would arguably include an assessment and award of damages that the Plaintiff neither sought nor proved. Thus, the majority's misapprehension of the type of relief sought by the Plaintiff has led to a factually flawed decision and has increased the risk faced by Cache Valley. Indeed, as explained further in the "Suggestion of Mootness," filed separately on this date, the issue of the Plaintiff's entitlement to the injunctive relief sought is now moot because the Plaintiff has left the Dairy business altogether to teach school in Arizona.

POINT TWO

THE MAJORITY'S ASSERTION THAT THE MAY 26TH RESOLUTION EFFECTIVELY LEVIES A TWO PERCENT ASSESSMENT ON IDAHO MEMBERS AND A ONE PERCENT ASSESSMENT ON UTAH MEMBERS IS ERRONEOUS AND IF LEFT UNCORRECTED COULD RESULT IN SUBSTANTIAL DAMAGE TO CACHE VALLEY.

The May 26th resolution provides:

(1) Paying the assessment imposed on the sale of milk as provided by Section 4-22-7 U.C.A. 1953 as amended, wherein such funds are used by the Utah Dairy Commission to promote the sale and advertising of dairy products; or

(2) Any members who elect to have the 1% refunded to them pursuant to the foregoing statute as authorized by state law, then such member shall be required to deposit said refund or the equivalent thereof and pay the same to the Cache Valley Dairy Association for the Association to use in its sales promotions and advertising of its dairy products which are marketed by the Association.

Any member of this Association who refuses to pay the assessment for advertising and sales promotion as set forth above, shall be deemed to be a non-cooperator and their membership may be terminated at the election of the Board of Directors.

The majority opinion asserts that the Plaintiff claimed the assessment was not uniform and concurs with the Plaintiff, stating "the resolution effectively levies a two percent assessment on Idaho members and a one percent assessment on Utah members." Merrill v. Cache Valley Dairy Association, slip. op. no. 19204 at 6 (December 1, 1987). In reaching those conclusions, the majority has ignored the fact that the issue of inequality was never raised by the Plaintiff on appeal and has misapprehended the function of the May 26th resolution.

The May 26th resolution was designed to create a parity between Utah and Idaho members. Utah law provides a one percent assessment on the sale of milk to provide revenue for use in financing Utah Dairy Commission promotions. See Utah Code Ann. §4-22-7. Idaho law also imposes a one percent assessment for use by the Idaho Dairy Commission in sponsoring promotion. See Idaho Code §25-3117. Unlike Idaho law, however, Utah statutes allow milk producers to opt out of the levy and claim a refund. See Utah Code Ann. 214-22-7(4).

Thus, if state law alone determined the issue, Idaho members would pay a mandatory one percent assessment while Utah members could choose not to pay the assessment imposed by Utah law (by requesting a refund). The undisputed intent of the May 26th resolution was to equalize the position of Utah and Idaho members by requiring Utah members to return to Cache Valley any refunds they received from the state for use in Cache Valley's promotional efforts.

At no point has it ever been maintained either by the Appellant or by the Respondent that the Idaho producers were not receiving credit for their state mandated assessment. This is the primary reason why this case has reached the Court since the May 26th resolution was adopted to maintain equality in the organization between the Idaho producers and the Utah producers. The factual conclusion that the May 26th resolution results in a two (2%) percent assessment to the Idaho producers should not have been addressed on appeal as this was never raised by the Appellant in the either the trial court below, or in his briefs to the Supreme Court, is not essential to a resolution of the case and in fact ignores what in reality has been the practice of the Association.

This erroneous conclusion can only give the Idaho producers the impression that all the Utah producers, (not merely the handful who requested a refund) are not paying their fair share thus creating further disharmony and discord among the interstate membership of the Cooperative.

It is respectfully urged that the majority withdraw any and all reference to a two percent assessment to the Idaho producers as the effect of this on long term relationships with the Idaho members is extremely damaging, is not in practice correct (and was never questioned until now) and is not necessary to reach the ultimate results which the majority opinion decides.

If the Court desires to reverse the trial court, the majority opinion under Part III of its opinion provides adequate basis for holding for Plaintiff. By doing this, it will not unnecessarily do violence to the Cooperative's Board of Directors' efforts in attempting to maintain equality between the Idaho and the Utah producer members of the Association.

Cache Valley respectfully requests that the Court rehear this matter or alternatively reissue the majority opinion with the two errors corrected.

POINT THREE

THE MAJORITY OPINION'S REASONING FAILS TO ADEQUATELY DISTINGUISH BETWEEN PLAINTIFF'S STATUS AS A "MEMBER" OF CACHE VALLEY ASSOCIATION AND AS A "MILK PRODUCER" AND THUS MISAPPREHENDS A FUNDAMENTAL AND WELL-ESTABLISHED DISTINCTION IN COOPERATIVE LAW.

Because the Respondent, Cache Valley Dairy Association, operates as a cooperative under Title 3, Utah Code Annotated, the Plaintiff, Theon Merrill, occupies two separate and distinct legal relationships with the Association. It is respectfully submitted that the majority errs in its legal analysis by failing to treat the termination of the "independent contractor-milk producer" contract relationship separately from that of the termination under the bylaws of the "membership" relationship.

Although this analogy may not be perfect, it appears that the majority opinion ignores the termination of the Plaintiff under the contractual relationship and keys solely on the May 26th resolution. Because the majority opinion merges in its analysis the rights and obligations under these separate relationships, it would appear that there is an unstated premise which has not been fully tested for its correctness. For example, if one were to argue that Notre Dame is a Catholic Institution and conclude therefrom that all those who attend Notre Dame are Catholics one would be falsely assuming that the only students registered at Notre Dame are Catholic students, a

premise which is false. Similarly to conclude that the Association cannot have rights of termination regarding the "milk contract" with its "milk suppliers" which are broader than the Association's rights to terminate the "membership" relationship is to assume without stating clearly that the rights and obligations of the parties and the two positions they occupy to one another are not separate or distinct, but are the same. It is respectfully submitted that this is a serious fallacy. Since there are very few opinions regarding this subject matter upon which one can obtain guidance, it would seem imperative for this Court to issue a well reasoned opinion, since this is likely to become a controlling case on future cooperative law.

Title 3 UCA clearly delineates and maintains a distinction between the "member" relationship and the "milk supplier or producer" relationship which a milk producer occupies. Title 3 grants Cache Valley the status of a separate legal entity (separate from its members) and sets out specific statutory provisions required for the bylaws of the organization which control the "membership" relationship and separate statutory provisions which control the "milk supplier" or "producer" relationship.

As a "member" of the Association, the Plaintiff Merrill and Cache Valley Dairy have certain rights and obligations vis a vis one another. The Plaintiff is entitled to one vote as a member.

of the Cooperative. As a "member" he was also entitled to share in the profits of the Association based on his patronage of the Association. In addition, as a "member" he was given certain protection underneath the bylaws as well as Title 3 itself, which protections are specifically established and operate in his favor in his capacity as a "member" of the Association.

As a "producer" or an "independent contractor-supplier of milk" to the cooperative, the Plaintiff Merrill and Cache Valley Dairy have other (additional) rights and obligations vis a vis one another. In his capacity as a "milk producer," Plaintiff Merrill was required to ship milk meeting minimum state health quality standards (i.e. bacteria free) capable of being utilized in the Association's production facilities to produce quality dairy products. As a "milk producer," the Plaintiff Merrill was contractually required to meet certain health laws and regulations set up regarding the cleanliness of his dairy herd and facilities as well as other contractual obligations. As a milk producer, the Plaintiff Merrill received a price for his milk which was set on a market rate. This price was set independently of any amount of retainage which the Plaintiff Merrill would receive as a "member," i.e. from future contingent profits of the Association. As a "milk producer," the Plaintiff Merrill occupied the legal relationship of an independent contractor-supplier of milk to Cache Valley Dairy. If during

the course of some farming operation Plaintiff Merrill committed a tortious harm to a third party, the third party would have no right to proceed against the assets of Cache Valley Dairy Association, since the Association is not a partnership, but is a separate legal entity. If during the course of Cache Valley Dairy's operation it were to injure a third party, the converse is also true, that the third party could not proceed against the Plaintiff Merrill as either a member of the Association or as a supplier of milk. The Plaintiff would respectfully submit that if this independent contractor-supplier of milk aspect of the legal relationship is ignored or merged in the analysis of the rights and obligations of the Association to Merrill and Merrill to the Association under the "membership" relationship that the legal analysis is needlessly contaminated.

It would appear that the majority opinion contains within it an unstated premise, i.e. that the legal relationship of the Plaintiff Merrill as a "member" as well as a "producer or independent supplier of milk" are merged and are not legally different nor do they need to be treated separately and thus, it is respectfully submitted, becomes flawed. The Association would respectfully submit that its rights to terminate a producer's contract under the contract terms are broader than the majority recognizes applying their merged analysis. The minority opinion

appears to have grasped this distinction which the majority opinion ignores. It is respectfully submitted that since the opinion will become one of the leading cases in the area of state cooperative law that the analysis and logic which the Court applies to arrive at its conclusions should be clearly stated.

CONCLUSION

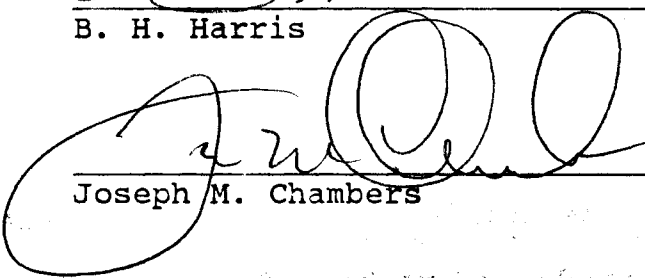
If the opinion remains in its present form, it could lead to a mass exodus of members from the Association (which they have a right to withdraw from between June 1 and June 10 each year as permitted under their membership contract) which will cause greater damage to the Cache Valley Dairy. This could cause irreparable harm to the Association if the Idaho producers elected to withdraw.

The undersigned respectfully requests the Court to reconsider its decision in this matter and if the conclusion remains the same, then in the alternative, that the portion relating to the resolution and the effects of disparity be eliminated from the decision as there are sufficient grounds that the Court could sustain its decision and not cause additional harm to the dairy that the opinion in its present form is expected to cause.

RESPECTFULLY SUBMITTED this 5th day of January, 1988.

HARRIS, PRESTON, CHAMBERS, & WILLMORE


B. H. Harris

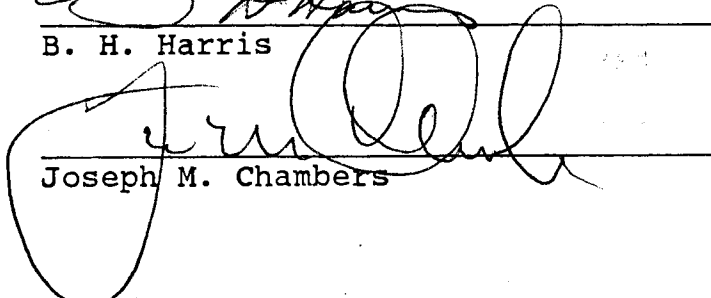

Joseph M. Chambers

CERTIFICATE OF GOOD FAITH

STATE OF UTAH)
) ss.
County of Cache)

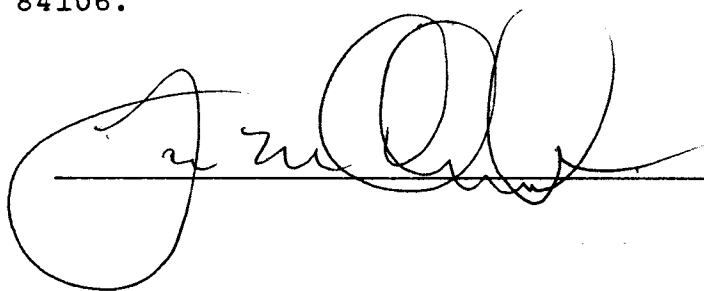
B.H. Harris and Joseph M. Chambers, counsel for the Cache Valley Dairy Association, hereby certify that they have read the above and foregoing Petition for Rehearing and certify that the said petition is presented in good faith and not for delay and that the same is made for the purpose of correcting erroneous conclusions which were overlooked or misapprehended by the majority opinion of the Court which misconstrued certain facts in the case as set forth above. That it is imperative the opinion if published, be correct factually so conclusions will be based upon correct facts.


B. H. Harris


Joseph M. Chambers

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 5th day of January, 1988, ten copies of the foregoing brief were filed with the Clerk of the Supreme Court and that on said date, the undersigned mailed four copies of the foregoing to William L. Schultz, attorney for the Plaintiff and Appellant, 1061 East 2100 South, Salt Lake City, Utah 84106.

A handwritten signature in black ink, appearing to be "J. Reuben Clark", is written over a horizontal line. The signature is stylized with large loops and a long horizontal stroke at the end.